

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

DAVID RENG0

Plaintiff,

v.

CAMILO DEPINA and SHANDY
COBANE, SEATTLE POLICE OFFICERS,
JOHN DOE OFFICERS, and CITY OF
SEATTLE,

Defendants.

NO. C 12-298 TSZ

SECOND AMENDED
COMPLAINT

Plaintiff, DAVID RENG0, by and through his attorney of record, the Law Office of
PETER T. CONNICK, for his claims against the above named defendants, alleges as follows:

I. PARTIES

1.1 Plaintiff DAVID RENG0, at all times material hereto, was a resident of King
County, Washington.

1.2 Defendants, Seattle Police Officers CAMILO DEPINA and SHANDY COBANE, at all

SECOND AMENDED COMPLAINT
PAGE - 1 -

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1 times material hereto, were residents of King County, Washington, and were duly
2 appointed police officers for the City of Seattle. Seattle Police Officers JOHN DOE #1,
3 JOHN DOE #2, JOHN DOE #3, JOHN DOE #4, JOHN DOE #5, JOHN DOE #6, JANE DOE #1,
4 JANE DOE #2 and JANE DOE #3, as seen in In-car Video 6275@2010424013010
5 (referenced below as Video #6275) and elsewhere, at all times material hereto, were
6 residents of King County, Washington, and were duly appointed police officers for
7 the City of Seattle.

8
9 1.3 Former Police Chief JOHN DIAZ, was at all times material hereto, a resident of King
10 County, Washington, and the duly appointed and acting Chief of Police for the City
11 of Seattle, a Washington municipal corporation and subject to the jurisdiction of this
12 Court.

13 1.4 The SEATTLE POLICE DEPARTMENT is a municipal department organized under the
14 laws of the State of Washington and subject to the jurisdiction of this Court.

15 1.5 Defendant CITY OF SEATTLE is a municipality organized under the laws of the
16 State of Washington and subject to the jurisdiction of this Court.

17
18 II. JURISDICTION AND VENUE

19 2.1 Plaintiff incorporates and adopts by reference the allegations contained in Paragraphs
20 1.1 through 1.5 above.

21 2.2 Jurisdiction is proper under 28 U.S.C. §1343 and 28 U.S.C. §1331. The §1343
22 permits federal district courts to hear cases involving the deprivation of civil rights,
23 and §1331 permits federal courts to hear all cases involving a federal question or issue.
24

25 SECOND AMENDED COMPLAINT
26 PAGE - 2 -

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2.3 Venue is proper in this court pursuant to 28 U.S.C. § 1391(b)(1)-(2), 42 U.S.C. § 1983, prior court orders dated February 22, 2012 removing the State action to federal court and November 4, 2013 granting leave to amend.

III. STATEMENT OF FACTS

3.1 Plaintiff incorporates and adopts by reference the allegations contained in Paragraphs 1.1 through 2.3 above.

3.2 The KING COUNTY PROSECUTOR'S OFFICE charged DAVID RENGO with Assault in the Third Degree (i.e., assaulting a police officer) allegedly occurring as follows:

That the defendants CHAD D. JORDAN and DAVID ALEXANDER RENGO, and each of them, together with another, in King County, Washington, on or about April 24, 2010, did intentionally assault Detective Daniel Cobane, and that he was a law enforcement officer or other employee of a law enforcement agency who was performing official duties at the time of the assault.

(State v. David Rengo, King Co. #10-1-03621-7 SEA - Criminal Information & Certification Of Probable Cause.

3.3 The alleged misconduct occurred the early morning hours of April 24, 2010 in the 2200 block of 1st Avenue, Seattle. It was reported that around 1:30 am Officer SHANDY COBANE and his partner, Detective JONATHAN HUBER, both part of the SPD "pro-active" gang unit, responded to a disturbance outside the Amber Club while cruising Belltown. Officer COBANE exited his vehicle and ran up and grabbed CHAD JORDAN from behind because JORDAN was fighting with an Asian male. According to Officer COBANE'S report, JORDAN struggled free from COBANE'S grasp after DAVID RENGO pushed him from behind. COBANE ran after JORDAN and JORDAN was later found and detained on 1st & Lenora Streets, Seattle. When COBANE walked back to 1st Ave. "a citizen approached (him) and said 'Thats (sic) the other guy that was fighting' pointing at Rengo." Mr. RENGO was detained by COBANE and two bicycle

1 police, cuffed and moved to a patrol car by a swarm of officers with the use of
 2 excessive force and physical abuse. After being placed in the patrol car, Mr. RENG
 3 was choked by Officer DEPINA who entered the back seat of the patrol vehicle. The
 4 choking can be heard on Video #6275. Fellow officers stood around the patrol car
 5 while the choking happened.

6 3.4 Police did not request or take a statement from Mr. RENG
 7 harassment, mistreatment and abuse throughout and after the ordeal - being choked
 8 and physically abused while handcuffed by officers and choked by Officer DEPINA.
 9 RENG
 10 explained what happened afterwards to KIRO News who interviewed him
 11 regarding the police abuse. Mr. RENG
 12 complained that he encountered COBANE in
 13 Belltown just after midnight on April 24, 2010. RENG
 14 further explained that someone
 15 with another group "sucker punched" him as he left a bar next to the Amber Restaurant
 16 and that his friends jumped to his defense. A small melee erupted. Police in black
 shirts came flying into the melee -- SPD gang unit detective SHANDY COBANE was in
 the center of it all. RENG
 further explained, "The officers immediately grabbed me,
 threw me on a car, and slammed my head against it. I'm trying to tell them, 'No. I just
 got attacked. It wasn't me fighting!' "

17 3.5 DAVID RENG
 18 provided more detail to KIRO News:

19 DAVID RENG
 20: "They say that I pushed him, that he fell and scratched his hand,
 21 which is just a lie."

22 CHRIS HALSNE: "You don't remember putting your hands on Officer Cobane?"
 23 (KIRO News Reporter)

24 RENG
 25: "Absolutely not. I saw when he entered the scene so I know I didn't
 26 touch him. I saw him come into the scene and grab Chad and I was
 27 in front. Not in a position to even touch him."

28 SECOND AMENDED COMPLAINT
 PAGE - 4 -

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"... I was laying on my back. They threw me from the street side into the passenger side back of the car. He came around the passenger side, opened the door up and just choked me until I lost, I couldn't, when I started kicking because I was about to pass out, he let me go, I took a breath, then he choked me again."

Seattle Cop In Stomping Incident Accused Of Abusing Another Suspect, KIRO November 9, 2010, www.kirotv.com/news/25687185/detail.html.

- 3.6 According to a SPD internal investigation report, DAVID RENGU came forward and gave a statement in his case about a month after the incident because "he had seen media coverage of the China Harbor (i.e., MARTIN MONETTI) incident involving the named employee and felt that he needed to report his own experience." 11/09/10 Memo, Lt. M. KUEHN. Mr. RENGU, however, consistently maintained that the police never asked for nor took a statement from him. This violated police procedure.
- 3.7 Other police errors and omissions led to the unjust arrest, detention and prosecution of RENGU. The police failed to promulgate proper police procedure and standards for carrying out investigations of abuse and false charging. For example, the police failed to obtain names and phone numbers of witnesses. Detective JONATHAN HUBER told police officers not to give statements. Detective HUBER and Lieutenant CARMEN BEST failed to supervise officers by not requiring Officers COBANE and DEPINA to file a *Use of Force Report*. In addition, Lt. BEST and Sgt. JAMES DYMENT allowed Officer COBANE to file a *Hazard Report* on April 27, 2010 with the General Offense #10-132966 handwritten in and the type written #10-133047 crossed out (the #10-133047 number is associated with Officer DEPINA). Plaintiff asserts that this was done to hide Officer DEPINA'S involvement in the incident. In addition, the gang unit pursued its own investigation of crimes allegedly committed against the unit - i.e., the alleged assault of Officer COBANE. Officer DEPINA failed to file a *Use of Force Report* for the choking of RENGU. [*Hazard Reports* under SPD Policy

1 3.065 (*Responding to Threats & Assaults on Officers*) are different from *Use Of*
2 *Force Reports* under SPD Policy 6.240 XI (*Reporting the Use of Force - when*
3 *required*)]. The failure to make a *Use Of Force Report* violated police policy and
4 procedure.

5 3.8 Only certain police officers turned on their lights or used dash cam videos which
6 violated police procedure. Officer AARON DALAN has admitted breaching protocol
7 and violating police policy and procedure when he failed to turn on his dash cam
8 video and when he failed to advise RENG0 he was being recorded when transferred
9 to the West Precinct. Sergeant JAMES DYMENT did not perform his role as
10 supervisor and did not follow the *Hazard* and/or *Use of Force* procedures, thereby
11 violating police policy and procedure. Lieutenant CARMEN BEST did not file a
12 report or give a statement, which violated police policy and procedure. Besides not
13 making a *Use Of Force Report*, Officer COBANE had to be held back by another
14 officer at the West Precinct when RENG0 was in the holding cell. His movement
15 toward RENG0 to fight RENG0 was also a violation of police policy and procedure.
16 Officer COBANE also gave RENG0 the middle finger while RENG0 was in the
17 holding cell which also violated police procedure. Officer COBANE forwarded
18 paperwork to the prosecutor knowing it was false. Likewise, Officer DEPINA failed
19 to make any report or statement of his contact with DAVID RENG0 in the patrol car.
20 In fact, Officer COBANE and DEPINA changed a general offense number on a April
21 27, 2010 *Hazard Report*, an general offense number associated with Officer
22 DEPINA. These acts were intentional and deliberate attempts to conceal reports and
23 evidence that supported RENG0's complaints of excessive use of force, outrage and
24 civil rights violations. It also violated RENG0's Constitutional rights under the 4th
25 and 14th amendments to the United States Constitution.

3.9 These acts, as described above, violated SPD policy and procedure. Sergeant STEPHEN HIRJAK, JR. was tasked with the Office of Public Accountability (OPA) investigation of RENG0'S complaints against SPD officers. HIRJAK did not review or disclose Video #6275 (of RENG0'S arrest). King County Detective JEFFREY MUDD did not interview most of the officers involved in the incident, did not attempt to find out if there were any security cameras at the club that RENG0 and others were ejected from, and did not attempt to follow-up or talk to any other officers that may have been at the scene. Police officers left RENG0 in handcuffs for several hours in the holding cell. Officers deliberately lied about the incident and pursued an unlawful prosecution. This includes an April 27, 2010 *Hazard Report* changing *General Offense* numbers to conceal Officer DEPINA'S involvement in the case and evidence of DEPINA'S dash cam video. The Office of Professional Accountability covered-up police abuse and white-washed the incident to hide the truth. The CITY OF SEATTLE, SPD and the City Attorney's Office also engaged in dishonest, untruthful and deceptive acts by not disclosing Video #6275; this video was only revealed after years of Public Records Act requests from RENG0'S attorney. These acts violated RENG0'S Constitutional rights under the 4th and 14th amendments to the United States Constitution.

3.10 The RENG0 choking incident occurred just a week after DEPINA and COBANE were caught on videotape where COBANE was using a racially charged language, then kicking an innocent detainee along Westlake Avenue. It was April 17, 2010 and the detainee was MARTIN MONETTI. Indeed, approximately 13 minutes before the RENG0 choking incident, Officer COBANE was videoed by dash cam roughing up a female suspect in the 332 - 5th Ave. North (lower Queen Anne) near Belltown. (1.1 miles from the choking scene according to Mapquest - see SPD Officer CHRISTOPHER S. MYER'S Video #5452@ 2010424011317). Officer COBANE is

SECOND AMENDED COMPLAINT
PAGE - 7 -

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1 heard swearing at the female detainee "you had a fucking chance to go home but
2 you're being stupid." Officer COBANE encountered 13 minutes later and treated
3 RENG0 similarly - i.e., with swearing and abuse.

4 3.11 The police had a video dash cam of Mr. JORDAN's arrest which showed him placed
5 against a police car, placed in the patrol car and transported to the jail. Mr. JORDAN
6 protested his guilt throughout the ride as did Mr. RENG0. In Mr. RENG0's case, the
7 police saved and produced only one of at least two dash-cam videos - i.e., the
8 transport video, not the arrest video. The King County Prosecutor, prompted by the
9 Seattle Police and the Seattle City Attorney, pursued a corrupt prosecution against
10 RENG0. The discovery period for RENG0's criminal case ran up to his criminal trial
11 (April, 2010 - April, 2011). SPD and the City Attorney's Office of Seattle claimed
12 they did not have that portion of the video of Mr. RENG0's arrest and choking
13 despite RENG0's attempts to discover them before the April, 2010 trial. In the partial
14 video SPD produced for criminal trial, Mr. RENG0 appears agitated and asks the
15 transporting officer what the charges are against him and for *Miranda* rights.
16 Despite defense requests to produce the dash cam hard-drive, the Seattle Police
17 persisted in their claim that the hard-drive for the vehicle dash cam cannot be "ghost
18 copied" because the hard drive has been over-written so many times. The Seattle
19 City Attorney's Office has claimed the same. This turned out to be a lie when the
20 dash cam video (#6275) was finally produced after multiple PRA requests from
21 Attorney PETER T. CONNICK's office on or about May 2, 2013. These acts also
22 violated RENG0's Constitutional rights under the 4th and 14th amendments to the
23 United States Constitution.

24 3.12 Mr. RENG0 denied the charges of felony assault on an officer and sought a jury trial
25 on the bogus criminal charges. Several days of pre-trials ensued (Hon. Judge JOAN
26 DUBUQUE) regarding preservation of evidence and police misconduct which led to

27 SECOND AMENDED COMPLAINT
28 PAGE - 8 -

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1 dismissal. In dismissing the prosecution the trial court found that RENGOS arrest
 2 and prosecution was the most poorly investigated case she had seen in her 22 years
 3 on the bench:

4 DuBuque criticized Seattle police for a lack of officer and witness statements
 5 on the incident and for failing to follow a department protocol requiring all
 6 patrol cars to activate their dashboard cameras when they stopped to
 7 investigate the alleged assault, DuBuque said. She also criticized Seattle gang
 8 detectives for investigating the case when a member of the gang unit was the
 9 alleged victim.

*Judge dismisses assault case, criticizes Seattle police investigation, Jennifer
 Sullivan, Seattle Times, April 26, 2011.*

10 3.13 Despite the lack of reliable evidence, admitted lapses in police procedure, suspicious
 11 lack of investigation and reporting, and obvious dishonesty both the Seattle Police
 12 Department and its officers COBANE, DEPINA, BEST and others, the KING COUNTY
 13 PROSECUTOR'S OFFICE (KCPO) persisted in the prosecution of Mr. RENGOS and the
 14 alleged felony assault of Officer COBANE. KCPO proceeded to trial which resulted in
 15 the further deprivation and violation of Plaintiff's civil rights. If convicted of felony
 16 assault of an officer, DAVID RENGOS faced 1 - 3 months in jail, community custody of
 17 up to one year, plus fines, costs and other restrictions on his liberty including loss of
 18 his right to vote and to carry arms.

19 3.14 The prosecution of Plaintiff was done in bad faith, and was the result of ill will held
 20 by Defendant Officers SHANDY COBANE and CAMILO DEPINA, other SPD officers, the
 21 Seattle Police Department, the City of Seattle and King County through its officers.

22 3.15 The actions of Defendants described above were done for the purpose of depriving
 23 Plaintiff of his civil rights and with the knowledge that said actions would result in
 24

1 such deprivations. Such acts violated RENG0'S Constitutional rights under the 4th and
2 14th amendments to the United States Constitution.

3 3.16 During the course of the arrest, investigation and prosecution of Plaintiff, as well as
4 the confinement of Plaintiff, Defendants acted in concert with each other,
5 intentionally conducted a sham internal investigation of Plaintiff's allegations of
6 police abuse and misconduct, and controlled the flow of information provided to the
7 King County Prosecutors, much of which was false, unfounded, unreliable and part of
8 a cover-up.

9 3.17 During all times material hereto, Defendants acted within the course and scope of their
10 employment.

11 3.18 The deliberate and intentional abuse, harassment, excessive force, and misconduct of
12 Officers COBANE and DEFINA and other officers against Plaintiff as detailed above, as
13 well as the improper manner of investigating the false allegation of felony assault
14 against Officer COBANE, is a settled and accepted practice of the City of Seattle and
15 King County. The *U.S. Justice Department, Civil Rights Division Report* dated
16 December 16, 2011 concluded at page 3: "We find that SPD engages in a pattern of
17 using unnecessary or excessive force, in violation of the Fourth Amendment to the
18 United States Constitution and Section 1411."

19 3.19 The actions taken by Defendants were in violation of clearly established
20 constitutional protections of which Defendants knew, or with reasonable foresight,
21 should have known. The use of excessive force in the course of an arrest,
22 investigatory stop, detention and continued prosecution violated RENG0'S
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1 Constitutional rights under the 4th, and 14th amendments to the United States
2 Constitution.

3 3.20 During the course of the investigation of RENGOS complaints of police abuse and excessive
4 force, false arrest, false imprisonment, malicious prosecution and violation of his civil
5 rights, the SEATTLE POLICE DEPARTMENT and the CITY OF SEATTLE, as well as officials in
6 King County, acquiesced in the wrongful actions of Defendants, and were in effect
7 sanctioning this improper conduct as an official practice and policy of these entities, as the
8 prosecution continued even after notice of the wrongful actions was brought to their
9 attention.

10 3.21 Plaintiff is still suffering from his unlawful arrest, detention and malicious
11 prosecution for over three years. The Washington State Patrol has computer entries
12 related to the incident and have flagged Mr. RENGOS as a danger to police which
13 further aggravates the deprivation of RENGOS Federal Constitutional rights.

14 IV. CLAIM FOR DAMAGES

15 4.1 Plaintiff incorporates and adopts by reference the allegations contained in Paragraphs
16 1.1 through 3.21 above.

17 4.2 Claims for damages on behalf of Plaintiff were properly filed with the Defendants.
18 More than sixty (60) days have elapsed since the filing of said claims.
19

20 V. CAUSES OF ACTION

21 A. FIRST CAUSE OF ACTION - VIOLATIONS OF U.S.C. §1983

22 5.1 Plaintiff incorporates and adopts by reference the allegations contained in Paragraphs 1.1 through
23 4.2 above.
24

25 SECOND AMENDED COMPLAINT
26 PAGE - 11 -

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1 5.2 Defendant Officers DEPINA, Officer COBANE, and other officers including Officer
2 HUBER, Officer DALON, Sgt. DYMENT, Lt. BEST, Officers JOHN DOE #1 - #6,
3 Officers JANE DOE #1 - #3 and other officers, the SEATTLE POLICE DEPARTMENT, as
4 well as officials of the CITY OF SEATTLE and KING COUNTY, acting under color of law,
5 have deprived Plaintiff of rights guaranteed to him by the United States
6 Constitution, in violation of 42 U.S.C. §1983, and RENG0'S Constitutional rights
7 under the 4th and 14th amendments to the United States Constitution.
8

9
10 5.3 Defendants DEPINA, COBANE and other officers named above, the SEATTLE POLICE
11 DEPARTMENT, as well as officials of the City of Seattle and King County, acting
12 through their officials and under color of law, were in violation of 42 U.S.C. §1983,
13 when they instituted and maintained official policies regarding the use of excessive
14 force, investigations of police abuse, harassment and misconduct which policies
15 deprived Plaintiff of his constitutionally guaranteed rights.
16

17 5.4 False arrest and imprisonment involve the following elements: (1) intent to confine,
18 (2) plaintiff was conscious of the confinement, (3) that plaintiff did not consent to the
19 confinement and (4) that the confinement was not otherwise privileged. SPD Officers
20 COBANE, DEPINA and other SPD officers intended to detain, intimidate, harass and
21 confine RENG0 without his consent. Such police action was not privileged and
22 violated RENG0'S 4th and 14th amendment rights under the United States
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25 SECOND AMENDED COMPLAINT
26 PAGE - 12 -

27 Law Office of
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1 Constitution.

2 5.5 The CITY OF SEATTLE, by and through its SEATTLE POLICE DEPARTMENT, falsely
3 arrested, falsely imprisoned, and maliciously prosecuted DAVID RENG0 as described
4 above and in violation RENG0'S Constitutional rights under the 4th and 14th
5 amendments to the United States Constitution.
6

7 5.5 **Failure to train and supervise:** The CITY OF SEATTLE, by and through its SEATTLE
8 POLICE DEPARTMENT, failed to train and supervise its police officers. SPD owed a
9 general duty to DAVID RENG0 and the public not to use excessive force against
10 citizens, not to unlawfully detain and imprison citizens, not to falsely accuse citizens,
11 not to initiate and continue criminal prosecutions against citizens, and not to obstruct
12 and cover-up police misconduct. The CITY OF SEATTLE, its employees and SPD
13 officers failed to use reasonable care in the training and/or supervision of its officers
14 to ensure that they were fit for their positions. There was breach of these duties which
15 caused injury to Mr. RENG0.
16
17

18 5.6 This claim for failure to train and supervise in Para. 5.1 through 5.5 is based upon the
19 premise that an employer, the CITY OF SEATTLE and the SEATTLE POLICE
20 DEPARTMENT, should be liable when it places an employee, who it knows or should
21 have known behaves wrongfully, in a position in which the employee can harm
22 someone else. The CITY OF SEATTLE knew of violations of suspects' civil rights from
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1 the China Harbor incident of April 17, 2010 where COBANE and DEPINA were
2 involved in the detention and abuse of a Mexican suspect (MARTIN MONETTI) and
3 years of complaints of excessive force by SPD. The Department of Justice in its
4 December 16, 2011 *DOJ Report* highlighted the fact that SPD failed to adequately
5 train and supervise police officers. In this case, as in other cases, this included gang
6 unit supervisors instructing regular officers not to write reports and deliberately lying
7 through both omission and commission in reports. For example, on this last
8 allegation, Det. KUEHN alleged in an October 7, 2010 OPA report (Office of Public
9 Accountability) that Rengo smeared feces on his holding cell window. This was a lie.

10
11
12 5.7 “[A] municipality may be liable if it had notice of prior misbehavior by its officers
13 and failed to take remedial steps amounting to deliberate indifference to the
14 offensive acts.” *Patzner v. Burkett*, 779 F.2d 1363, 1367 (CA8 1985); see also, e.g.,
15 *Fiacco v. Rensselaer*, 783 F.2d 319, 327 (CA2 1986) (multiple incidents required for
16 finding of deliberate indifference); (“[A] municipality may be liable if it had notice
17 of prior misbehavior by its officers and failed to take remedial steps amounting to
18 deliberate indifference to the offensive acts”); *Languirand v. Hayden*, 717 F.2d 220,
19 227-228 (CA5 1983) (municipal liability for failure to train requires “evidence at least
20 of a pattern of similar incidents in which citizens were injured or endangered”);
21 *Wellington v. Daniels*, 717 F.2d 932, 936 (CA4 1983) (“[A] failure to supervise gives
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1 rise to § 1983 liability, however, only in those situations where there is a history of
2 wide-spread abuse. Only then may knowledge be imputed to the supervisory
3 personnel").
4

5 5.9 In its 12/16/11 report (pp. 19-20), the DOJ noted the inadequacy of SPD's training
6 and investigation of use of force. The examination found "sergeants (who) do not
7 have a clear sense of their responsibilities as investigators of the use of force. . .
8 which result(ed) in unconstitutional uses of force by inadequately supervised
9 officers." Sergeants are first-line supervisors who respond to use of force incidents
10 and oversee their officers' activities on a daily basis. The DOJ report admonished
11 SPD by directing that "sergeant training should not be limited to use of force
12 investigations. SPD sergeants should receive general training about how to conduct
13 thorough and effective investigations, as we have also seen deficiencies in general
14 OPA line investigations. . . as well as in investigations of biased policing allegations."
15 12/16/11 *DOJ Report*, p.19. The DOJ report also noted that "The importance of
16 training sergeant supervisors to properly investigate use of force incidents cannot
17 be overstated." *DOJ Report*, p.19. These deficiencies in effective use of force
18 investigations is the same pattern and practice seen in RENO's case.
19
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22 5.10 **Inadequate Oversight and Review of Use of Force.** The SPD's *Use of Force*
23 policy requires that use of force packets be forwarded through the chain of command,
24

1 typically from a sergeant, to the watch Lieutenant, to the Captain of the Precinct, and
2 to the employee's Bureau Commander, typically the Assistant Chief over Patrol
3 Operations. SPD DP&P 6.240.XII.B.12. The DOJ found that this process "was a mere
4 formality, almost a rubber stamp of the first-line supervisor's conclusion". . . . and that
5 there was "little evidence that management and Department executives conduct a
6 meaningful review of the use of force." 12/16/11 *DOJ Report*, p. 19. In RENG0'S
7 case, neither Lt. CARMEN BEST and/or Sgt. JAMES DYMENT did any meaningful
8 review of the case. An OPD review by Lt. MARK KUEHN was the typical rubber-
9 stamping, white-wash noted in the 12/16/11 *DOJ Report*.

12 5.11 The misconduct and excessive use of force against RENG0 is part of a broader pattern,
13 custom and practice of mistreatment by SPD of suspects. In the 12/16/11 *DOJ*
14 *Report*, the Department of Justice attaches an "Appendix A", which shows how
15 many times each individual SPD officer used force between January 1, 2009 and
16 April 4, 2011. The 600+ officers are placed in random order. The chart shows that
17 during this period, 11 officers used force 15 or more times, and 31 officers used force
18 10 or more times. Of all officers who used force 10 or more times, only one officer
19 received administrative review of any kind. As noted by the DOJ, "This statistic
20 indicates that there is minimal supervisory oversight over officers who frequently use
21 force." The DOJ also noted:

1 Effective supervisory techniques should focus on the relatively small number
2 of officers who use force frequently to better understand why they use force,
3 when they use force, and what training or other remedies, if any, are needed to
4 minimize the use of force. The supervisory technique of collecting data and
5 examining the activity of particularly active officers should be extended to
6 examining the activity of officers who may be outliers in other aspects of
7 policing, including, but not limited to pedestrian stops. Extending supervision
8 and data collection in this way is important to reduce the number of excessive
9 force incidents because the officers who are outliers in use of force are often
10 the same officers who are outliers in the context of seizures such as pedestrian
11 stops.

12 12/16/11 *DOJ Report*, p. 19.

13 This lack of "extended examination" of officer misconduct was part of a pattern,
14 practice and custom in RENGOS case and led to a deprivation of his constitutional
15 rights under the 4th and 14th amendments.

16 5.12 The City of Seattle has been aware of or should have been aware of the lack of
17 supervision and investigation of use of force complaints for years. "[A] municipality
18 may be liable if it had notice of prior misbehavior by its officers and failed to take
19 remedial steps amounting to deliberate indifference to the offensive acts". See, *e.g.*,
20 *Fiacco v. Rensselaer*, 783 F.2d 319, 327 (CA2 1986) (multiple incidents required for
21 finding of deliberate indifference); *Patzner v. Burkett*, 779 F.2d 1363, 1367 (CA8
22 1985) ("[A] municipality may be liable if it had notice of prior misbehavior by its
23 officers and failed to take remedial steps amounting to deliberate indifference to the
24 offensive acts"); *Languirand v. Hayden*, 717 F.2d 220, 227-228 (CA5 1983)

(municipal liability for failure to train requires "evidence at least of a pattern of similar incidents in which citizens were injured or endangered"); *Wellington v. Daniels*, 717 F.2d 932, 936 (CA4 1983) ("[A] failure to supervise gives rise to §1983 liability, however, only in those situations where there is a history of wide-spread abuse. Only then may knowledge be imputed to the supervisory personnel").

5.13 A recent *Second Semiannual Report* from The Seattle Police Monitor dated November 15, 2013, commented on number of findings involving lack of training and supervision within the department which shows SPD's knowledge of the problems and resistance to correction. First, with respect to failing to activate dash cam videos, the problem is systemic:

Pages 7 - 8: The Monitoring Team's discoveries have been alarming. Although the SPD keeps data on uses of force, it is incomplete, lacks necessary detail, and is frequently incorrect. The current data management system, the Administrative Investigations Management system ("AIM"), is unacceptably antiquated, impractical, and onerous to use. It lags far behind other law enforcement agencies and best practices. At the time of this report, SPD simply lacks any reliable means of knowing or analyzing when and how its officers are using force.

Page 10: First, use of force data is frequently incomplete in the AIM program because the underlying force reports themselves are incomplete. That is, officers frequently omit critical descriptive data on the form on which basic information about the use of force is recorded. Much data is missing, likely because it was never reflected on use of force forms in the first instance.

Page 14: During the last year, the Monitoring Team learned of an incident in which a substantial number of patrol vehicles responded to the scene of an officer-involved shooting. Incredibly, none of the officers activated their in-car

1 video or audio systems during the key moments of the incident. Purported
 2 excuses were made, including shift changes, the emergent nature of the situation,
 3 and the time necessary to log on. The presence of a command officer, and plenty
 4 of planning time, should have allowed for compliance with the SPD's ICV
 5 policy--which requires the use of recording equipment when responding to an
 6 emergency. Whatever the reasons might have been, no video was recorded.
 During the course of several other hearings by SPD's review boards, it became
 clear that the failure to log on to and activate the ICV is not an uncommon
 occurrence and is never an occasion for discipline.

7 The incident described above is exactly the kind of incident that should
 8 have been immediately referred to OPA. for administrative review because there
 9 might have been misconduct on the part of officers who failed to follow existing
 policy on activating cameras.

10 Page 15: The oft-cited officer explanations—that equipment malfunctioned,
 11 that the incident was too fast-moving to allow ICV activation, that log-in is
 12 cumbersome, that the "out-of-range" warning for the body rule is troublesome -
 13 are routinely accepted by command staff and management without further
 inquiry. . . .

14 No effort is underway—at least one disclosed to the Monitoring
 15 Team to establish a process to eliminate all viable excuses so that officers whose
 audio or video systems are not operational during a use of force incident can be
 held accountable for violations of the ICY policy where appropriate.

16 5.14 With respect to the lack of supervision, the November 15, 2013 *Second*
 17 *Semiannual Report* was just as harsh:

18 Page 16: Supervisors must ensure that their reports know that the lack of video
 19 or audio of an incident will not be automatically excused on the grounds that the
 20 equipment was not working, too cumbersome to employ, or the like. The active
 and passive resistance to the implementation of ICV technology must end.

21 Page 26: The UOFRB (Use Of Force Review Board) has deemed force packets to
 22 be incomplete when they failed to find relevant video, inadequately described a use
 23 of force (e.g., including in a narrative that the officer "took the suspect to the
 24 ground" rather than providing a more detailed description of *how* the officer took
 the suspect to the ground), and failed to identify and interview witnesses seen in a

25 SECOND AMENDED COMPLAINT
 26 PAGE - 19 -

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1 video. The Captain may also return incomplete packets to the Precinct before the
 2 Board receives them. Problematically, however, beyond sending an incomplete
 3 packet back for further information, the Monitoring Team knows of no
 4 consequences to the Chain of Command for incomplete packets. Recently, the
 5 Captains and Watch Commanders of all Precincts have been reminded of
 deficiencies being seen regularly in their reviews of I:OF packets. It will be
 expected that these deficiencies will be promptly reduced.

6 Likewise, on far too many occasions, packets are not completed in a timely
 7 fashion. Pursuant to current SPD policy, UOF reports are supposed to be
 8 completed within 72 hours of a use of force incident, and reviewed by the Chain
 9 of Command in a similar time frame! When reports are not completed within this
 10 time frame, the delay is typically excused because it purportedly related to
 11 "requests for additional information and review of the available WV's" or other
 similar justifications. These excuses do not explain delays in submission that
 have lasted in excess of 30 days. The unexcused delays and lack of specificity in
 explaining the delay are entirely unacceptable.

12 . . . The officer's Precinct Chain of Command tacitly accepted the continued
 13 violation of SPD policy. The Board's repeated reference to the untimeliness of
 these reports went unheeded by the presiding Captain and Assistant Chief.

14 5.15 SPD review boards on use of force deliberately subvert neutral and fair review of
 15 complaints as noted in the Monitor's *Second Semiannual Report*:
 16

17 Page 34: The FRB's (Firearms Review Board) The FRB's current deficiencies go
 18 beyond an inability to embrace a broad inquiry that is critical and rigorous. Too
 19 often, the examination of the involved officer involves suggestive or leading
 20 questions. Breaks between multiple officers' testimony have permitted Board
 21 members or observers to potentially communicate the substance of questions being
 22 posed to, or testimony being provided by, preceding officers to witnesses that have
 23 yet to testify. Likewise, the manner and means by which the officer's written
 24 statements are obtained does not lead to an appearance of independent, uncoached,
 unrehearsed testimony, as officers are not consistently sequestered prior providing
 statements. Such inconsistencies permit the possibility or, at a minimum, the
 appearance of collusive, biased, or inaccurate testimony.

1
2 5.16 The actions of Defendants were intentional and were done with reckless disregard of
3 Plaintiff's federally protected rights. Certainly there has been notice to the City of
4 Seattle and SPD of prior misbehavior by its officers and failed to take remedial steps
5 amounting to deliberate indifference to the offensive acts. There is also evidence of a
6 practice, pattern and custom of similar incidents in which citizens were injured or
7 endangered.
8

9 5.14 Plaintiff is entitled to recover compensatory, as well as punitive damages, and
10 attorneys fees and costs of this suit against the individuals named herein as
11 Defendants and to recover compensatory damages, attorneys fees and costs of suit
12 against the City of Seattle, and Officers DEPINA and COBANE individually as named
13 as Defendants herein.
14

15 B. SECOND CAUSE OF ACTION

16 MALICIOUS PROSECUTION BY OFFICERS DEPINA, COBANE, OTHER SPD OFFICERS AND THE
17 SEATTLE POLICE DEPARTMENT

18 6.1 Plaintiff incorporates and adopts by reference the allegations contained in Paragraphs
19 1.1 through 5.14 above.

20 6.2 DAVID RENGU asserts that his April 24, 2010 arrest was an unlawful seizure in
21 violation of the Fourth Amendment and the concealment of material evidence,
22 falsification of evidence, and that the fabrication of charges against him violated the
23
24

25 SECOND AMENDED COMPLAINT
26 PAGE - 21 -

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Fourteenth Amendment's guarantee of due process.

6.3 “Malicious prosecution consists of initiating or procuring the arrest and prosecution of another under lawful process, but from malicious motives and without probable cause . . .” *Sullivan v. County of Los Angeles*, 12 Cal.3d 710, 720, 117 Cal.Rptr. 241, 527 P.2d 865 (1974). Under 42 U.S.C. §1983, a “criminal defendant may maintain a malicious prosecution claim not only against prosecutors but also against others—including police officers and investigators - who wrongfully caused his prosecution.” *Smith v. Almada*, 640 F.3d 931, 938 (9th Cir.2011); see *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir.2004). To maintain a §1983 action for malicious prosecution, a “plaintiff must show that the defendants prosecuted (him) with malice and without probable cause, and that they did so for the purpose of denying (him) a specific constitutional right.” *Smith*, 640 F.3d at 938; *Awabdy*, 368 F.3d at 1066.

6.4 Other courts have held that police officers may be liable under §1983 for prosecution without probable cause if they fail to disclose exculpatory evidence to prosecutors, make false or misleading reports to the prosecutor, omit material information from the reports, or otherwise interfere with the prosecutor's ability to exercise independent judgment. See *Sanders v. English*, 950 F.2d 1152, 1162–1164 (5th Cir.1992) (deliberate concealment or deliberate failure to disclose patently exculpatory evidence to prosecutor exposes officer to liability for malicious

1 prosecution under § 1983); *Barlow v. Ground*, 943 F.2d 1132, 1136–1137 (9th
2 Cir.1991), *cert. denied*, 505 U.S. 1206, 112 S.Ct. 2995, 120 L.Ed.2d 872 (1992)
3 (officer may be liable under §1983 where his omission of crucial information
4 prevented prosecutor from making independent judgment); *Robinson v. Maruffi*, 895
5 F.2d 649, 655 (10th Cir.1990) (officer may be liable under §1983 for malicious
6 prosecution if he purposefully concealed and misrepresented material facts which
7 may have influenced prosecutor's decision to prosecute); *McMillian v. Johnson*, 878
8 F.Supp. 1473, 1502–1503 (M.D.Ala.1995) (police officers have a clearly established
9 duty to turn exculpatory evidence over to the prosecutor for disclosure to the
10 defendant); *Rhodes v. Smithers*, 939 F.Supp. 1256, 1273–1274 (S.D.W.Va.1995)
11 (citing *Mahoney v. Kesery*, 976 F.2d 1054, 1061 (7th Cir.1992)) (officer may be
12 liable under § 1983 if he procures a prosecution by lying to the prosecutor). The Third
13 Circuit has stated:

14
15
16
17 Where a police officer causes an arrest to be made pursuant to a warrant which
18 he obtained on the basis of statements he knew to be false or on the basis of
19 statements he makes in reckless disregard of the truth, a plaintiff may recover
20 damages under section 1983 for “unreasonable seizure” of his person in violation
21 of the Fourth Amendment.

22 *Lippay v. Christos*, 996 F.2d 1490, 1502 (3rd Cir.1993); citing, *Forster v. County*
23 *of Santa Barbara*, 896 F.2d 1146, 1148 (9th Cir.1990) (per curiam) (adopting the
24 standard of determining the validity of search warrants enunciated by *Franks v.*
25 *Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), in permitting

§1983 plaintiffs to recover for violations of the Fourth Amendment); see also *Haupt v. Dillard*, 794 F.Supp. 1480, 1490 (D.Nev.1992) (same).

6.5 In Mr. RENG0'S case, Officer DEPIA, individually and in concert with Officer COBANE and other officers, failed to make complete and submit a *Use Of Force Report*, failed to complete or file an officer report or statement of his contact with DAVID RENG0 April 24, 2010, changed a general offense number associated with Officer COBANE on an April 27, 2010 *Hazard Report* that associated *Depina* with the incident, and acted in concert with other officers to hid his contact with RENG0 April 24, 2010. Such acts were obstructive and led to the City's/ SPD's denial of Video #6275 - i.e., the DEPIA dash cam video. Video #6275 has audio where RENG0, while handcuffed in the back seat of the patrol car, is heard yelling in the back seat of the patrol car being choked. Other officers are standing beside, around and in back of the patrol vehicle during the RENG0 choking within the sight and sound of the choking. Officer DEPIA, individually and with other officers, failed to disclose exculpatory evidence to the KING COUNTY PROSECUTOR'S OFFICE, omitted reports to the prosecutor thereby creating a false prosecution, omitted material information from reports to support a bogus prosecution, and otherwise interfered with the prosecutor's ability to exercise independent judgment thereby leading to a fabricated prosecution.

6.6 Plaintiffs are entitled to recover compensatory, as well as punitive damages, and

1 attorneys fees and costs of this suit against the individuals named herein as
2 Defendants and to recover compensatory damages, attorneys fees and costs of suit
3 against the City of Seattle, and Officers DEPINA and COBANE individually as named
4 as Defendants herein.
5

6 C. THIRD CAUSE OF ACTION
7 OUTRAGE

8 7.1 Plaintiff incorporates and adopts by reference the allegations contained in Paragraphs
9 1.1 through 6.4 above.

10 7.2 The above described actions of Defendants, the CITY OF SEATTLE, and the SEATTLE
11 POLICE DEPARTMENT, and King County were extreme, outrageous and beyond all
12 bounds of decency. Defendants' actions were reckless and/or intentional, and were
13 done for the purpose of causing Plaintiff severe emotional distress.
14

15 7.3 Plaintiff is entitled to recover compensatory, as well as punitive damages, and
16 attorneys fees and costs of this suit against the individuals named herein as
17 Defendants and to recover compensatory damages, attorneys fees and costs of suit
18 against the CITY OF SEATTLE, and Officers DEPINA and COBANE individually as
19 named as Defendants herein.
20

21 VI. DAMAGES

22 8.1 Plaintiff incorporates and adopts by reference the allegations contained in Paragraphs
23 1.1 through 7.3 above.
24

25 SECOND AMENDED COMPLAINT
26 PAGE - 25 -

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1 8.2 As a direct and proximate result of the actions of the Defendants named herein, and
2 each of them, the Plaintiff has sustained both economic and non-economic damages,
3 to be proven at the time of trial, and which include, but are not limited to physical
4 injuries, emotional and mental distress, humiliation, embarrassment, reduction in the
5 ability to enjoy life, pain and suffering, out of pocket expenses, including attorneys
6 fees and costs, and lost wages.
7

8
9 VII. ATTORNEY'S FEES

10 9.1 Plaintiff is entitled to recovery of attorney's fees herein. Plaintiffs allege that a fair
11 and reasonable fee to pay to Plaintiff's attorney in these proceedings is \$200.00 per
12 hour for all attorney's time expended, \$80.00 per hour for paralegal's time expended,
13 \$40.00 for secretarial services, plus out of pocket costs and expenses.
14

15 VIII. PRAYER FOR RELIEF

16 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as
17 follows:

- 18 • For recovery of all economic and non-economic damages in an amount to be
19 proven at trial;
- 20 • For recovery of exemplary and punitive damages;
- 21 • For recovery of all reasonable attorney's fees and costs incurred herein;
- 22 • For recovery of interest on each item of damages from the date incurred until paid at
23 a maximum statutory rate; and
- 24 • For such other relief as this Court deems just and equitable.

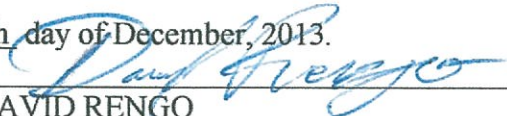
DATED this 4th day of December, 2013


PETER CONNICK - WSBA # 12560
Attorney for Defendant

STATE OF WASHINGTON)
) VERIFICATON OF COMPLAINT
KING COUNTY)

DAVID RENGO, being first duly sworn upon oath deposes and states, that I am the above-referenced complainant whose name appears in this *Second Amended Complaint* and who submitted this *Second Amended Complaint*; I know the contents thereof; and the matters set forth in this *Second Amended Complaint* are true, correct and made to my best knowledge and belief. I swear under penalty of perjury under the laws of the State of Washington that the above statements are true and correct.

DATED this 4th day of December, 2013.


DAVID RENGO
Complainant

SECOND AMENDED COMPLAINT
PAGE - 27 -

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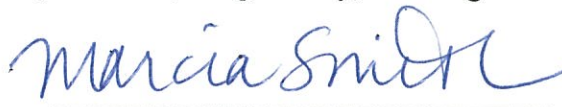
CERTIFICATE OF SERVICE

I certify that on the 10th day of December 2013, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

Attorneys for Defendants: City of Seattle, SPD Officers Shandy Cobane and Camilo Depina:

Brian G. Maxey, brian.maxey@seattle.gov
Sarah K. Morehead, sarah.morehead@seattle.gov

DATED this 10th day of December, 2013, at Seattle, King County, Washington.



MARCIA SMITH, Paralegal